IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 459/2007
(Sarpanch, Gram Panchayat, Balana Vs. Moola Ram & Ors.)

Date of Order : 09/02/2007

PRESENT
HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Girish Sankhala for the petitioner.

BY THE COURT:-

By the instant writ petition under Article 226 and 227 of the Constitution of India, the petitioner seeks quashing of award dated 12.11.2002 (Annex.1) passed by Judge, Industrial Disputes Tribunal and Labour Court, Jodhpur, the respondent No.2 and notification dated 13.2.2003 (Annex.2) by which the award Annex.1 passed by the respondent No.2 was published under Section 17 of the Industrial Disputes Act, 1947. The petitioner also seeks quashing of order dated 12.9.2006 Annex.7 passed by the respondent No.2 whereby the application filed by the petitioner under Section 22-A of the Rajasthan Industrial Disputes Rules, 1958 ("for short "the Rules of 1958" hereinafter) seeking setting aside the ex-parte award Annex.1 was dismissed.

I have heard learned counsel for the petitioner.

It is contended by learned counsel for the petitioner that there was no proper service on the petitioner and therefore, the petitioner could not appear before the labour court and contest the claim filed by the respondent No.1 workman on a reference being made by the State Government under Section 10 of the Industrial Disputes Act, 1947 and when the petitioner came to know of the award, the application under Section 22-A of the Rules of 1958 seeking setting aside the ex-parte award Annex.1 was filed by the petitioner. The respondent No.2 labour court dismissed the application on the ground that after expiry of 30 days from the date of publication of the award in the Gazette, the labour court becomes functus officio.

Learned counsel for the petitioner submits that the labour court fell in error in holding that after expiry of 30 days from the date of publication of the award (Annex.1) in the Gazette, the labour court becomes functus officio and the labour court had the jurisdiction to decide the application under Rule 22-A of the Rules.

Learned counsel has relied on a Division Bench decision of this Court in Pappu Ram Vs. The Labour Court, Jodhpur and Anr. 2005 (3) RDD 513 (Raj.) wherein this Court held that when an appropriate Government makes a reference to

the Industrial Tribunal or Labour Court under Section 10 (1) (c) it seeks opinion on an industrial dispute referred to it. The Tribunal is required to adjudicate on the dispute after taking necessary evidence and hearing the parties. Such an opinion is expressed in the form of award which becomes final only after its publication by the appropriate Government under Section 17 of the Act. Once the award becomes final, it cannot be altered or modified by the parties. Sub-section (8) of Section 10 lays down that by reason of the death of a workman who was a party to an industrial dispute pending adjudication before a Labour Court, Tribunal or National Tribunal, the proceedings before such adjudicatory authority will not affect. Thus, it is evident that an industrial dispute cannot be closed even by reason of death of a workman. Thus, the provision implies that the effective hearing of dispute must continue despite the death of one of the parties and an order on merit of the rival contentions should be pronounced and that in award dismissing the reference or rejecting the claim simplicitor should be passed by reason of death. It must not be forgotten that the Industrial Disputes Act has been enacted with an object to provide provision for the investigation and settlement of industrial disputes which means adjudication of such disputes also. The powers of the authority deciding the industrial dispute under the Act are very extensive much wider than the power of civil Court while adjudicating a

dispute which may be industrial dispute. It was further held that a Tribunal cannot answer an award made by appropriate Government under Section 10 (1) (c) in the name of no industrial dispute award. The reference proceedings does not abate even on the death of workman what to talk of absence of workman. Thus, it is obligatory on a Labour Court or a Tribunal to answer a reference made under Section 10 (1) (c) on merit after proper adjudication. It is for the Tribunal to evolve its own procedure in conformity with the rules and exercise the power vested with it to make an award on the basis of material available on record.

In whole of the decision in Pappu Ram (supra) it has not been said that after expiry of 30 days from the date of publication of the award whether the labour court or tribunal becomes functus officio.

This controversy came to be considered by Hon'ble Supreme Court in Sangham Tape Co. Vs. Hans Raj (2005) 9 SCC 331 wherein Hon'ble Supreme Court held that an award made by an Industrial Court becomes enforceable under Section 17-A of the Act on the expiry of 30 days from the date of its publication. once the award become enforceable, the Industrial Tribunal and/or Labour Court becomes functus officio.

The learned tribunal relying on the decision of Hon'ble Supreme Court in Sangham Tape Co. Vs. Hans Raj

(supra) held that after expiry of 30 days from the date of publication of the award Annex.1, the respondent No.2 labour court becomes functus officio and had no jurisdiction to set aside the award and accordingly dismissed the application seeking setting aside the ex-parte award. From the perusal of Order Annex.7, it is clear that on receiving the reference under Section 10 (1) (c) of the Act, it was registered and notice was issued to the parties. The respondent No.1 workman filed his claim. Notice was sent to the Vikas Adhikari, Sumerpur which was received on 14.12.2000 and 18.11.2000 and the notice on the present petitioner has been served on 9.11.2001 and therefore, it cannot be said that the notices have not been served on the employer petitioner. Despite service of notice, the petitioner failed to appear before the labour court and file the reply and contest the claim filed by the respondent workman. The labour court on the basis of the material placed before it including the affidavit of the workman came to the conclusion that the retrenchment of the respondent workman w.e.f. 1.3.1996 by the employer-petitioner was illegal and invalid and therefore, directed the employer-petitioner to reinstate the respondent workman while treating his services in continuity as also directed to pay 40% of back wages from the date of the reference i.e. 3.10.1999.

From the perusal of the award Annex.1, it appears that the respondent-workman appeared before the labour court,

filed his claim and affidavit along with certain documents showing that he has been working as Class-IV employee since 1982. There had been a resolution of the Gram Panchayat dated 10.10.1981 by which the workman respondent was engaged as Class-IV employee w.e.f. 1.1.1982 to operate the Engine and Electric Motor. He has placed on record the Resolution of the Gram Panchayat dated 4.3.1995 by which the respondent workman was used to be paid Rs. 600/- per month. He had served for about 15 years and thus has established that he was continuously in services of the petitioner employer and had completed 240 days in the calendar year preceding his retrenchment and thus the labour court finding sufficient material came to the conclusion that the workman was engaged with the employer petitioner and had been in continuous service for 240 days in the one calendar year preceding his retrenchment and therefore, the retrenchment of the workman was found to be in violation of Section 25-F of the Industrial Disputes Act.

In my view, it cannot be said that the petitioner employer had no opportunity to contest the claim filed by the respondent workman. It also cannot be said that the notices have not been served on the petitioner. The record shows that the notices have been served on the employer. In the circumstances, therefore, in view of the decision of Hon'ble

Supreme Court in Sangham Tape Co. Vs. Hans Raj, the decision relied on by the learned counsel for the petitioner is of no help to the petitioner since the controversy has neither been raised nor considered in that decision.

In this view of the matter, I do not find any ground to interfere in the impugned award Annex.1, notification Annex.2 and the order Annex.7 dated 12.9.2006. The writ petition is, therefore, dismissed. There shall be no order as to costs.

(H.R.PANWAR),J.

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